90-993

FILED
DEC 20 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

In the

Supreme Court of the United States

October Term, 1990

CSX TRANSPORTATION, INC.,
Petitioner,

vs.

STEPHEN RASTALL and TIMOTHY GOWDEY,
Respondents.

PETITION OF CSX TRANSPORTATION, INC. FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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December 20, 1990

QUESTIONS PRESENTED

1. Does the Railway Labor Act preempt a state court common law breach of contract action by Canadian employees of a U.S.-based railroad alleging violation of a collective bargaining agreement, where the Canadian employees are members of a craft or class composed of predominantly U.S. employees?

2. As parties to a collective bargaining agreement that embodies the dispute resolution procedures of the Railway Labor Act, are the Canadian employees of a U.S.-based railroad required to arbitrate disputes regarding the interpretation of the agreement's grievance procedures?

3. If the Railway Labor Act does not preempt a common law breach of contract action in state court by Canadian employees of a U.S.-based railroad, does federal labor policy nevertheless require that the state court apply federal labor law principles rather than the common law of commercial contracts in interpreting the grievance provisions of collective bargaining agreements?

4. If the Railway Labor Act does not preempt a common law breach of contract action in state court by Canadian employees of a U.S.-based railroad, the federal principle of comity require that a state court apply the labor laws of Canada to claims by Canadian employees arising out of a collective bargaining agreement, where those employees' work is performed entirely in Canada?

LIST OF PARTIES
AND RULE 29.1 LIST

The parties before the court of appeals and this Court are all listed in the caption.

CSX Transportation, Inc. ("CSXT") is a wholly-owned subsidiary of CSX Corporation ("CSX"). The subsidiaries and affiliates of CSXT or CSX, other than those wholly owned by them, are:

The Akron Union Passenger Depot Company;
Allegheny and Western Railway Company;
Augusta and Summerville Railroad Company;
The Baltimore and Cumberland Valley Railroad Extension Company;
Beaver Street Tower Company;
Central Transfer Railway and Storage Company;
Chatham Terminal Company;
Clearfield and Mahoning Railway Company;
Dayton and Michigan Railroad Company;
The Home Avenue Railroad Company;
The Lakefront Dock and Railroad Terminal Company;
Mid-Allegheny Corporation;
North Charleston Terminal company;
Richmond-Washington Company, which has a subsidiary, RF&P Corporation;
Winston-Salem Southbound Railway Company;
Woodstock & Blockton Railway Company

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PETITION OF CSX TRANSPORTATION, INC. FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner CSX Transportation, Inc. ("CSXT") prays that a Writ of Certiorari be issued to review the opinion and order of the District of Columbia Court of Appeals rendered in these proceedings on May 8, 1990.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 574 A.2d 271, and is reprinted in the Appendix at A-1-18. [1]The order of the District of Columbia Court of Appeals denying CSX's petition for rehearing, issued on October 10, 1990, is reprinted in the Appendix at A-23. The

[1]"A" refers to the Appendix bound in the same volume as this Petition. "SA" refers to the separately bound Supplemental Appendix, which includes record materials.

opinion and order of the District of Columbia Superior Court, issued on March 1, 1989, is reprinted in the Appendix at A-19-22.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) to review a decision of the District of Columbia Court of Appeals, the highest court in which a decision may be had in the District of Columbia.[2] 28 U.S.C. § 1257(b). The decision for which review is sought was filed on May 8, 1990. A petition for rehearing was timely filed on May 22, 1990 and was denied on October 10, 1990 (A-23).

STATUTORY PROVISIONS INVOLVED

This Petition involves Sections 1, 1a, 2 Ninth, and 3 of the Railway Labor Act ("RLA"), 45 U.S.C. § § 151, 151a, 152 Ninth, and 153, and Section 155(1) of the Canada Labour Code. These statutes are reprinted in the Appendix at A-29-35.[3]

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[2]The order at issue reversed the trial court's grant of summary judgment to Petitioner and remanded the case for trial, rejecting Petitioner's arguments that jurisdiction of Respondents' claim was preempted by federal statute and that application of federal labor law principles required affirmance of the trial court's decision in any event. The order of the D.C. Court of Appeals is thus "plainly final on the federal issue[s]" raised herein, and reversal of the Court of Appeals "would be preclusive of any further litigation." *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482 (1975).

[3]The Canada Labour Code has been recently recodified. Former Section 155(1) is now found at Canada Labour Code R.S., c. L-2, s. 57(1). There has been no substantive change to this provision. For simplicity, Petitioner refers to the Code as it was previously organized.

STATEMENT OF THE CASE

Petitioner CSXT, a railroad company incorporated in Virginia, operates approximately 19,000 miles of track in the United States and 200 miles in Ontario, Canada (A-2).[4] CSXT or its predecessors have had Canadian operations and employees since well before the 1926 enactment of the RLA. CSXT inherited its Canadian operations from a predecessor, which acquired control of the Pere Marquette Railway in 1929. *See, e.g., Pere Marquette Ry. Merger*, 267 I.C.C. 207, 212-15 (1947). Of CSXT's 34,000 employees, 200 are Canadian citizens who work in Canada and the remainder are U.S. citizens. CSXT's unionized employees are organized into 13 system-wide crafts or classes. CSXT employees in each craft or class are represented by a single international union, without regard to the citizenship or location of the employees. CSXT is party to collective bargaining agreements with these unions negotiated according to the procedures and substantive requirements of the RLA. These agreements apply to Canadian as well as U.S. employees in the covered job classifications.

This case arises out of a dispute over whether the rates of pay specified in CSXT's collective bargaining agreements, which are expressed only in terms of "dollars", require that CSXT pay its Canadian employees in Canadian dollars or in the equivalent of U.S. dollars. CSXT has historically paid its Canadian employees, all of whom live and work entirely in Canada, in Canadian dollars, without regard to the exchange rate between U.S. and Canadian currency. The exchange rate recently having favored the U.S. dollar for several years, the Respondents, who are two of CSXT's Canadian employees, now wish to be paid in the equivalent of U.S. dollars rather than Canadian dollars (SA-8). Respondents are also claiming

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[4]At the time this action commenced, CSXT operated a 20,000-mile system.

that CSXT's Canadian employees, unlike its U.S. employees, can litigate rather than arbitrate their contract grievances, even though the U.S. and Canadian employees are subject to the same labor agreements, and Canadian grievances have always been handled under the same grievance and arbitration procedures as grievances involving U.S. employees (SA-4).

In accordance with Section 3 of the RLA, 45 U.S.C. § 153, each of the collective bargaining agreements between CSXT and its unions contains arbitration procedures for resolving disputes over the application or meaning of the agreements. For example, the collective bargaining agreement between CSXT and the Brotherhood of Railway Carmen of the United States and Canada ("Carmen"), Respondents' collective bargaining representative, contains a dispute resolution procedure which requires submission of "all claims or grievances" to CSXT representatives for resolution (SA-148-149). Rule 32(c) of that agreement has read, at least since 1955, in part that:

> All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly-authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto provided in Section 3 Second of the Railway Labor Act.

Rule 33 similarly provides that "[s]hould the highest designated railroad official, or his duly authorized representative and the aggrieved employee, or his representative as provided in the first paragraph of Rule 32, fail to agree, the case shall then be handled in accordance with the Railroad [sic] Labor Act." (SA-150) Consistent with these provisions, CSXT's Canadian employees have an established past practice of following the

grievance and arbitration procedures set forth in the collective bargaining agreements, which were negotiated in contemplation of RLA requirements (SA-13-17, 19-129).

Rather than pursue the contractual arbitration procedures, however, Respondents initiated a state common law breach of contract action in the District of Columbia Superior Court, and demanded a jury trial.[5] In their complaint (SA-4-5), Respondents sought certification to represent a class of "all past, present and future employees of CSXT who have resided and worked for CSXT in Canada." None of CSXT's unions who, under labor law, are the exclusive representatives of CSXT's employees, U.S. and Canadian, participated in the lawsuit.

CSXT promptly removed the action to the United States District Court for the District of Columbia, asserting that Respondents' claim raised a federal question under the RLA. The District Court remanded to the Superior Court, however, on the basis that the RLA was inapplicable to Canadian citizens working in Canada. *Rastall v. CSX Corp.*, 696 F. Supp. 683 (D.D.C. 1988).

After remand, and before any motion to certify a class was filed, CSXT moved for summary judgment on the grounds that its Canadian employees were required by the RLA and the terms of their collective bargaining agreement, and past practice to arbitrate their grievance. The Superior Court granted CSXT's motion, concluding that the collective bargaining agreement unambiguously required Respondents to arbitrate their dispute, and finding it:

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[5]Respondents apparently selected the D.C. Superior Court because their attorney's office is located in the District of Columbia, and CSXT is subject to that court's jurisdiction because it does business there. (SA-4,9).

> implausible . . . that these unions could have bargained with the Railroad for a dispute resolution provision that would require the Railroad's 32,000 American employees to submit minor disputes such as this one to final and binding arbitration, but would permit the 200 Canadian employees to bypass arbitration and opt for court litigation. Moreover, even if the unions would have had some unknown reason for favoring a tiny minority of their members over the majority, it is hard to imagine why the Railroad would have agreed to such a system. Where, as here, plaintiffs' interpretation of those contracts ignores the realities of the marketplace of collective bargaining and goes against the RLA and the strong policy favoring arbitration embedded in both American and Canadian labor law, it is not unreasonable for the court to demand some evidence in the contract itself or in the circumstances surrounding the making of the contract that this interpretation was intended by the contracting parties. (SA-20-21)

Before the Superior Court issued its ruling, CSXT initiated arbitration proceedings over the currency issue before the National Railroad Adjustment Board ("NRAB"). The NRAB assumed jurisdiction and reached a decision in cases involving the United Transportation Union ("UTU") and Brotherhood of Locomotive Engineers. The NRAB found in each case that, under the agreements and unbroken past practice of more than 30 years, the Canadian employees were to be paid in Canadian dollars. Respondents' attorney separately submitted the dollar issue to the NRAB on behalf of Canadian employees in each of CSXT's various crafts. (SA-167-188) After the NRAB found in CSXT's favor under the UTU

collective agreement for the second time, Respondents' attorney withdrew his other claims before the NRAB.[6]

In a decision unprecedented in U.S. labor law, the D.C. Court of Appeals reversed the Superior Court (A-1-18). The court first determined that the RLA was inapplicable to foreign employees who performed their work entirely outside the United States (A-5-6). The court also rejected CSXT's alternative argument that the Canada Labour Code required that the dispute be arbitrated, ruling that, although the Code expressed a strong preference for arbitration, it did not require arbitration where the parties had provided for an alternative method of resolving disputes (A-7-9).

The court then proceeded to do what this Court has repeatedly held that state courts may not do: it interpreted the grievance provisions of the Carmen's agreement, holding that they permitted Canadian employees to resolve contract disputes in the courts (A-17-18). The court based its interpretation on Rule 32(4) of the Carmen's agreement (A-17), which states that "[t]his Rule is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier." The court conceded (A-14) that its interpretation, if applied to U.S. employees, would contravene the RLA. The court also acknowledged (A-14) that it could find nothing in the language of the provisions or their bargaining history to indicate that CSXT and the unions intended to treat CSXT's Canadian employees differently from its U.S. employees. The court did not even purport to apply the principles applicable to the interpretation

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[6]Counsel for Respondents recently filed suit challenging the jurisdiction of the NRAB to issue these three arbitration awards, relying upon the Court of Appeals decision in *Rastall. Allen v. CSXT and National Railroad Adjustment Board*, No. 90-3045 (D.D.C. filed December 14, 1990).

of collective bargaining agreements under U.S. or Canadian labor law, and gave no weight in its analysis to the parties' uncontested past practice under the agreement to arbitrate the grievances of Canadian employees, never to litigate. The court then remanded the case to the Superior Court for further proceedings on the employees' breach of contract action (A-18).

REASONS FOR GRANTING THE WRIT

This case raises an issue of first impression that has serious implications for every railroad that has a contract covering crafts or classes that include foreign as well as U.S. employees.[7] By holding that the RLA, which governs the labor relations of U.S. railroads, does not preclude a common law breach of contract suit by a U.S.-based railroad's foreign employees, the decision below creates the anomalous result that, merely by crossing the border and bringing suit in any of fifty state courts, Canadian employees of a U.S. railroad can assert a cause of action that would not be available to them in their own country and would not be available to U.S. employees in this country. This result is in direct conflict with longstanding decisions of this Court, which have held that the RLA vests *exclusive* jurisdiction to resolve disputes involving interpretation of collective bargaining agreements--so called "minor" disputes[8]--in the NRAB or, should a railroad and

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[7]Other U.S.-based railroads have some portion of their operation in Canada and thus are likely to confront the situation that CSXT faces here. In addition, the two transcontinental Canadian railroads, Canadian National and Canadian Pacific, have operations in the U.S., either through the Canadian railroad, a U.S. subsidiary, or both. U.S. airlines, which, like railroads, are covered by the RLA, may also be affected by the *Rastall* decision to the extent they have foreign employees working in foreign countries.

[8]*See Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 723 (1945) (distinguishing "major" disputes arising out of the formation or change of collective bargaining agreements, from "minor" disputes arising out of grievances or out

union so agree, in public law boards that serve as the functional equivalent of the NRAB. 45 U.S.C. § 153 First, Second. Neither federal nor state courts have jurisdiction to resolve such interpretative disputes. CSXT's collective bargaining agreements, which are federal contracts negotiated in accordance with the RLA, reflect the statutorily-required dispute resolution procedures and thus themselves also require that grievances be arbitrated. The failure of the court below to give effect to the federal policies embodied in the RLA and in the agreements raises substantial federal questions.

Even if the RLA did not preempt the court below from hearing Respondents' breach of contract action, a substantial federal question is nevertheless raised by the court's application of common law commercial contract principles to the interpretation of a collective bargaining agreement. The application of such principles is inconsistent with this Court's decisions recognizing that collective bargaining agreements differ from commercial contracts and are subject to distinct rules of interpretation.

The court of appeals' decision also raises a significant issue as to the application of the federal principle of comity to this dispute, which involves Canadian employees who perform work entirely in Canada. In the circumstances of this case, the court's failure to apply Canadian law in deciding the issue before it infringes on the legitimate national interests of Canada in its own internal labor policies.

The potential for disruption of the labor relations of U.S. carriers created by the decision of the court below is clear. If the decision is allowed to stand, the stability in labor relations and integrity of collective bargaining agreements that

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of the interpretation or application of such agreements); *Consolidated Rail Corp. v. RLEA*, 109 S.Ct. 2477, 2480 (1989); *Atchison, Topeka & S.F. Ry. v. Buell*, 480 U.S. 557, 562-563 (1987) (same).

arbitration provides will be lost, and employers will face the prospect of conflicting legal obligations when the resolution of a minor dispute with the union on behalf of a craft is different than the result of a lawsuit brought by foreign employee members of the same craft. Indeed, a conflict already exists between the NRAB, a federal agency, and the court below, over the proper forum for such disputes. Such consequences are contrary to the RLA and the national labor policy it reflects, and raise important issues warranting this Court's review.

I. Allowing Canadian Employees Of A U.S.-Based Railroad To Bring A Breach Of Contract Action In State Court To Resolve A Contract Interpretation Dispute Raises An Important Issue Of First Impression Regarding The Preemptive Effect Of The Minor Dispute Provisions Of The Railway Labor Act On Lawsuits Brought By Foreign Employees

A. The Decision Of The Court Below Is Inconsistent With This Court's Decisions Holding That The Railway Labor Act's Grant Of Exclusive Jurisdiction To The NRAB To Resolve Contract Interpretation Disputes Preempts State Court Jurisdiction Over Such Disputes

The holding of the court below that the RLA did not apply to CSXT's Canadian employees, and that as a result those employees, unlike U.S. employees, can litigate disputes over the interpretation of collective bargaining agreements in a common law breach of contract action in a local court, is irreconcilable with numerous decisions of this Court, which establish that state courts are without jurisdiction to interpret railroad collective bargaining agreements.

Congress, in Section 3, First of the RLA, 45 U.S.C. § 153 First, purposefully committed disputes over the interpretation or application of collective bargaining agreements to the

exclusive jurisdiction of arbitration panels, called adjustment boards, for binding arbitration. *See, e.g., Consolidated Rail Corp. v. Railway Labor Executives Ass'n*, 109 S.Ct. 2477, 2480 (1989)("*Conrail*")("The . . . adjustment board . . . has exclusive jurisdiction over minor disputes."). Congress placed exclusive jurisdiction over such contract interpretation disputes in arbitrators, because of the need for "a reliable and effective system for the settlement of grievances," *IAM v. Central Airlines, Inc.* 372 U.S. 682, 690 (1963), and arbitrators' expertise with railroad labor agreements and practices. *See, e.g., Conrail*, 109 S. Ct. at 2484 (arbitrators "are experts in 'the common law of [the] particular industry'"); *Gunther v. San Diego & Arizona Eastern Ry.*, 382 U.S. 257, 261 (1965)(adjustment board is "expert body" which "is peculiarly familiar with the . . . whole range of grievances that constantly exist in the railroad world" and "knows the industry's language, customs, and practices."). *Cf. United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)(court cannot replicate labor arbitrator's expertise). Congress also viewed preemption of state law claims as necessary to obtain uniform interpretation of collective agreements.[9]

Given this statutory scheme, this Court has repeated time and again that neither federal nor state courts have any role

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[9]For example, the need for uniformity was explained by this Court in the context of § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, in *Teamsters Union v. Lucas Flour Co.*, 369 U.S. 95, 103-104 (1962):

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract.

in interpreting railroad collective bargaining agreements. *See, e.g., Union Pacific R.R. v. Sheehan*, 439 U.S. 89, 94 (1978)("Congress considered it essential to keep these so-called 'minor' disputes within the Adjustment Board and out of the courts."). *Accord Atchison, Topeka & S.F. Ry. v. Buell*, 480 U.S. 557, 562 n. 9 (1987); *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320 (1972); *Slocum v. Delaware, L. & W. R.R.*, 339 U.S. 239, 244 (1950)("This reasoning equally supports a denial of power in any court -- state as well as federal -- to invade the jurisdiction conferred on the Adjustment Board by the [RLA]."). To permit a state court to interpret a railroad collective bargaining agreement according to the many and varied principles applicable to state contract claims "would be fatal to the goals of the Act," especially "if a contractual provision contrary to the federal command were nevertheless enforced under state law . . . ." *Machinists*, 372 U.S. at 691. The enforcement of a railroad collective bargaining agreement is an area "within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law." *Machinists*, 372 U.S. at 693-694 n.17 (*quoting Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 176 (1942)).

The D.C. Court of Appeal's conclusion (A-5-6) that the RLA did not apply and that it was therefore free to interpret the collective bargaining agreement is contrary to these holdings by this Court and the entire scheme under the RLA for resolving contract grievances. These fundamental and longstanding principles are not nullified just because Respondents are foreign nationals. The labor contract that Respondents seek to enforce was negotiated and executed in the United States by a carrier and employee representative within the meaning of the RLA, 45 U.S.C. § 151 First and Sixth, and is enforceable in this country only pursuant to the RLA. By electing to pursue their claim in the United States,

Respondents can only assert that claim under the exclusive law governing railroad labor contracts in this country, the RLA.

The court of appeal's decision is also in direct conflict with the many awards of the NRAB and public law boards established under RLA Section 3 Second, which have exercised jurisdiction over contract interpretation disputes involving Canadian employees (SA-13-17, 19-129). For example, the NRAB, Third Division concluded in a 1961 award involving grievances by Canadian employees of a CSXT predecessor that it had jurisdiction over the dispute and its assumption of jurisdiction was not an extraterritorial application of the RLA. *Order of R.R. Telegraphers v. Chesapeake & O. Ry.*, NRAB, 3d Div., Award No. 12667 (1961)(SA-19-68).[10] The recent awards by the NRAB, First Division on the same dispute that was the subject of Respondents' Superior Court action are similarly in direct conflict with the court of appeals holdings that the RLA is inapplicable and their claims did not have to be arbitrated (SA-167-188). Unless this Court grants this petition, the conflict between adjustment boards and state courts will continue.

B. The Decision Of The Court Below Is Inconsistent With This Court's Decisions Holding That Railroad Collective Bargaining Agreements Are Federal Contracts Enforceable Only Under The RLA

The sole reason given by the D.C. Court of Appeals for finding that the RLA did not preempt Respondents' lawsuit was that to apply the RLA to Canadian employees would constitute extraterritorial application of the statute (A-5-6). There was, however, no extraterritorial application of the RLA on the facts of this case, because the RLA applied by virtue

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[10]Ten other awards by adjustment boards exercising jurisdiction over such grievances were submitted by CSXT to the Superior Court as evidence of the past practice of handling Canadian employee grievances. (SA-69-129.)

of Respondents' tactical election to press their claim in the United States, where the RLA totally occupies the field with respect to disputes arising from a railroad collective agreement.

Even if the RLA minor dispute procedures did not apply to Respondents' grievance as a matter of statute, the RLA grievance procedures, including binding arbitration of unsettled grievances, were made applicable to grievances by Canadian employees as a matter of contract. Such contractual adoption and extension of RLA procedures to Canadian employees does not result in the extraterritorial application of the statute, because their extension is by voluntary agreement of CSXT and the union, not by statute. The question whether the grievance procedures in the Carmen-CSXT agreement, as a matter of contract, applied to Canadian grievances, was itself a minor dispute, which this Court's precedents required to be arbitrated. That is because this question involved interpretation of an alleged agreement between an RLA carrier and RLA union contained in a federal contract, *i.e.*, a railroad collective bargaining agreement.

The Respondents conceded that the "contract" upon which they based their claim was a collective bargaining agreement between their union, the Carmen, and CSXT (SA-2). The court of appeals' analysis of their claim ignored the precedents of this Court that such a railroad "collective bargaining agreement is not an ordinary contract for the purchase of goods and services, nor is it governed by the same old common-law concepts which control such private contracts." *Transportation-Communications Employees Union v. Union Pacific R.R.*, 385 U.S. 157, 160-61 (1966). A railroad collective bargaining agreement is a "federal" contract that has no existence separate and apart from the RLA, and is enforceable

only through the RLA's procedures.[11] Under this Court's test for a minor dispute, if CSXT's interpretation of the grievance provision as well as the past practices of handling grievances was "arguably justified," the dispute with Respondents over the interpretation of this grievance provision was within the exclusive jurisdiction of an arbitrator. *Conrail*, 109 S.Ct. at 2484. Here, it cannot be said that CSXT's interpretation was not at least arguably justified. The language of the grievance provision does not expressly provide for court litigation as an alternative to arbitration of contractual grievances (SA-148-149). In addition, CSXT's explanation of the phrase "any other lawful action for the settlement of claims or grievances" to refer to claims arising under statutes[12] rather than the collective bargaining agreement was plausible, as even the Respondent's Canadian law expert admitted (SA-15). And, it was undisputed that the longstanding and consistent past practice under the grievance provision for more than 40 years was to arbitrate all grievances, whether affecting Canadian or U.S. employees (SA-13-17, 19-129). This past practice could arguably become an implied term of the collective bargaining agreement, as this Court recognized in *Conrail*, 109 S.Ct. at 2485 ("it is well established that the parties' 'practice, usage and custom' is of significance in interpreting their agreement.").

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[11]*See, e.g., Machinists*, 372 U.S. at 695 ("The contracts and the adjustment boards for which they provide are creations of federal law and bound to the statute and its policy."); *accord Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 323 (1972); *Detroit & Toledo Shore Line R.R. v. United Transp. Union*, 396 U.S. 142, 156 (1969).

[12]For example, in *Atchison, Topeka & S.F. Ry. v. Buell*, 480 U.S. 557, 568 (1987), this Court confirmed that railroad employees have an independent statutory right to bring an action for workplace injuries under the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.*, even though some injuries might likewise be the subject of grievances under the RLA. Employees would also have an independent statutory right to bring claims arising under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*, even though the same claims might be the subject of grievances.

The court of appeals did not apply this Court's minor dispute analysis. Instead, contrary to all precedent, it proceeded to interpret the grievance provision itself and resolve conflicting interpretations of that contractual provision in favor of Respondents (A-16-18). This action by the Court was an extraordinary usurpation of the exclusive jurisdiction of the arbitrator and cannot be countenanced under this Court's decisions.

The cases cited by the court to support its conclusion that preemption of state court actions would constitute extra-territorial application of the RLA do not justify its extraordinary result (A-6). With one exception, none of those decisions dealt with the interpretation of a collective bargaining agreement. They involved the issue whether representational disputes concerning foreign employees were subject to the RLA's procedures.[13] In the one other decision, *General Committee of Adjustment v. Burlington Northern, Inc.*, 620 F.2d 161 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980), the question was whether the RLA's minor dispute procedures extended to grievances by Canadian employees as a matter of statute. There was, however, no issue whether the carrier and union, by agreement, could apply the same procedures to all grievances. *See General Committee of Adjustment v. Burlington Northern, Inc.*, 563 F.2d 1279, 1286 (8th Cir. 1977)(leaving open question whether parties by agreement may voluntarily confer jurisdiction on Public Law Board).

II. Interpretation By A Court Of A Collective Bargaining Agreement According To The Common Law Of Commercial Contracts Conflicts With U.S. Labor Policy

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[13]*See Air Line Stewards & Stewardesses Ass'n v. Trans World Airlines, Inc.*, 273 F.2d 69 (2d Cir. 1959); *Air Line Dispatchers Ass'n, v. National Mediation Board*, 189 F.2d 685 (D.C. Cir. 1951); *Air Line Stewards & Stewardesses Ass'n v. Northwest Airlines, Inc.*, 267 F.2d 170 (1959), *cert. denied*, 361 U.S. 901 (1959).

Even if state courts have jurisdiction to interpret railroad collective bargaining agreements, U.S. labor policy requires that any such interpretation be rendered in accordance with federal principles established for the interpretation of labor contracts, not the often significantly different standards that apply to the interpretation of commercial contracts.[14] There are simply no state principles governing the interpretation of private sector collective bargaining agreements. That sphere has been completely preempted by federal law, either the RLA or the Labor Management Relations Act. Given that CSXT and the Carmen's union negotiated the collective agreements at issue with specific reference to the RLA and against the background of national labor policy favoring arbitration,[15] the conclusion of the court below (A-15) that the contract "unambiguously" authorized Respondents to bypass arbitration was contrary to the federal common law of labor.

For all these reasons, where a labor contract contains an arbitration clause, there is a presumption of arbitrability and "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in

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[14]The different results yielded by application of commercial contract principles and by the "common law" of collective bargaining agreements are extensively treated in Summers, *Collective Agreement and the Law of Contracts*, 78 Yale L.J. 525 (1969). *See Steelworkers*, 363 U.S. at 581-82.

[15]This Court has frequently recognized that provision for the arbitration of contract disputes is at the heart of federal labor policy. *See Consolidated Rail Corp. v. RLEA*, 109 S.Ct. 2477, 2483 (1989); *Lingle v. Norge Div. of Magic Chef, Inc.*, 108 S.Ct. 1877, 1884 (1988); *Andrews*, 406 U.S. at 323; *Machinists; Gunther v. San Diego & Arizona Eastern Ry.*, 382 U.S. 257, 261-62 (1965); *United Steelworkers*, 363 U.S. at 581. Indeed, as shown, *supra* pp. 10-13, under the RLA, arbitration of disputes concerning contract interpretation is mandatory.

favor of coverage." *Steelworkers*, 363 U.S. at 582-583. *Accord AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 650 (1986). Certainly, the parties' specific references in their contract to the RLA's mandatory arbitration provisions and the past practice of always arbitrating grievances,[16] at the very least, created doubt as to whether any other avenue for resolving contract interpretation disputes was intended. Even Respondents' own expert, Dean Rayner, admitted (SA-137) that the grievance provisions could be "interpreted in three ways," including that advanced by CSXT, under which the phrase "any other lawful action" was intended as "merely preserving rights of action that would exist apart from the collective agreement." Given the undisputed past practices and Respondents' admission, the court of appeals could not on any basis consistent with this Court's pronouncements conclude with "positive assurance" that the contract did not contemplate arbitration of all contractually-based grievances. The D.C. Court of Appeals ignored these federal labor law principles by failing to apply a similar presumption of arbitrability to the dispute presented in this case. And it is apparent that the court, by relying on commercial contract principles of construction, reached an interpretation of the collective bargaining agreement that an arbitrator could not have reached applying the "common law of the industry." The court's decision thus warrants review by this Court.

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[16]There is no dispute that CSXT and the Carmen negotiated the contract's dispute resolution provision with specific reference to the RLA. Thus, Rule 32 provides for resolution of grievances "before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto provided in Section 3 Second of the Railway Labor Act." (SA-149). Moreover, Rule 70 provided that the collective bargaining agreement "shall continue in effect unless and until changed in the manner prescribed by the Railway Labor Act, as amended." (SA 151).

III. The Decision Of The Court Below Raises An Important Question Regarding The Application Of The Federal Principle Of Comity To This Labor Dispute Involving Canadian Employees Working In Canada

Even if the RLA did not preempt the jurisdiction of the D.C. courts to hear this case, the federal principle of comity required that the courts below apply the law of Canada in resolving Respondents' contract claims. The principle of comity reflects

> the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895).[17] By looking to the commercial contract standards embodied in local common law to interpret the dispute resolution provisions of the collective bargaining agreement at issue,[18] the court of appeals failed to

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[17]The extent to which comity should be accorded to another country's laws is inherently a federal question as a result of its impact on international relations, an arena in which federal power has supremacy. *Cf. Hines v. Davidowitz*, 312 U.S. 52, 62-63 (1951) ("[F]ederal power in the field affecting foreign relations [must] be left entirely free from local interference."); *Laker Airways Ltd. v. Sabena, Belgian World Airways*, 731 F.2d 909, 937 (D.C. Cir. 1984) ("[C]omity compels national courts to act at all times to increase the international legal ties that advance the rule of law within and among nations."). This Court would have original jurisdiction of this controversy under Article III, Section 2 of the Constitution, because it is a case between a citizen of a State and foreign citizens.

[18]The court supported its reliance on what it considered to be the lack of facial ambiguity in the agreement's grievance provision with cases involving commercial contracts. *1010 Potomac Assoc. v. Grocery Mfrs. of Am.*, 485 A.2d 199 (D.C. 1984); *E.P. Hinkel & Co. v. The Manhattan Co.*, 506 F.2d 201

accord any deference at all to the legitimate interests that Canada has in this dispute, which involves Canadian citizens who work entirely in Canada. The decision thus presents an important question regarding the application of the principle of comity in these circumstances.

The court below violated the principle of comity in two ways. First, due regard for Canada's interest in the application of its own labor policies and laws to its own citizens working within its borders required that the D.C. court refuse to exercise its jurisdiction and instead direct the Respondents to a Canadian forum for a resolution of their claims. The District of Columbia's courts are accessible to Respondents only because CSXT happens to have a few miles of track within its boundaries. The District of Columbia has no contact with any of CSXT's Canadian employees and its laws and policies are unaffected by this dispute. The District of Columbia thus has no interest in this dispute sufficient to outweigh that of Canada. In these circumstances, comity required not just that the law of Canada be applied to determine the meaning of the contract provisions at issue, but also that Canadian courts, arbitrators, or labor boards, rather than the D.C. courts, make that determination.

Second, comity required that the court of appeals apply Canadian law in interpreting the collective bargaining agreements to determine whether they required CSXT's Canadian employees to resolve contract disputes through arbitration rather than through the courts. Although the court acknowledged (A-15) that "[a] collective bargaining agreement is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate," it nevertheless applied (A-15-16) commercial contract interpretation principles in concluding that the agreement

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(D.C. Cir. 1974).

"unambiguously" permitted breach of contract claims as an alternative to arbitration. The court's analysis violated the principle of comity by failing to take into account the principles of contract interpretation that would apply under Canadian law.

Section 155 of the Canada Labour Code requires inclusion of a provision for binding dispute resolution "by arbitration or otherwise" in every collective bargaining agreement (A-7).[19] Arbitration of contract interpretation questions is thus statutorily mandated, unless the collective bargaining agreement expressly provides for an alternative peaceful mechanism for resolving such disputes.[20] Proper accommodation of the

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[19]As the Supreme Court of Canada explained in *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paperworkers' Union*, [1986] 1 S.C.R. 704, 721, arbitration "is clearly the forum preferred by the legislature for resolution of disputes arising under collective agreements." *Accord Bourne v. Otis Elevator Co.*, [1984] 45 O.R. (2d) 321, 325 (H.C.J.); *McGavin Toastmaster Ltd. v. Ainscough*, [1976] 1 S.C.R. 718, 725-26; *Lawn v. Algonquin College of Applied Arts Technology*, [1982] 390 O.R. (2d) 377, 384 (H.C.J.). The reasons for this legislative preference in Canada are identical to the reasons why arbitration is preferred in the United States: stability, uniformity of result, and the need for an expert decision-maker. *See Bartello v. Canada Post Corp.*, [1987] 18 C.C.E.L. 26, 48-50 (H.C.J.). As stated in Carrothers, Palmer and Rayner, *Collective Bargaining Law in Canada* 481 (2d ed. 1986), a treatise co-authored by Respondents' Canadian law expert, "arbitration is virtually pre-emptive of civil processes." *See also* Arthurs, Carter and Glasbeek, *Labour Law and Industrial Relations in Canada*, ¶¶ 725-726, 811 (2d ed. 1984).

[20]The court below ruled (A-7-9) that the provision in the Canada Labour Code requiring that disputes be resolved "by arbitration *or otherwise*" indicated that the statute permitted the parties by agreement to provide for resort to the courts in lieu of arbitration, and cited *dicta* from one Canadian court that seemed to agree. *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers' Union*, 1 S.C.R. at 723. However, the Canadian courts have uniformly held that collective bargaining agreements by their nature are not common law contracts and thus are not enforceable at common law. *See* C.H. Curtis, *The Development And Enforcement Of The Collective Agreement* at 25-69 (1966). The Labour Code did not purport to create any new right of court action, and thus the reference to arbitration "or otherwise" can only

Canadian preference for arbitration required that the court of appeals take into account this preference for arbitration and interpret the agreement to require arbitration if it did not expressly require that another method of dispute resolution be used. This presumption is so strong that Respondents were unable to offer a single Canadian precedent where employees covered by a collective agreement were permitted to bring a breach of contract action in a Canadian court. As discussed, *supra*, Respondents' own Canadian law expert, Dean Rayner, admitted that the contract's dispute resolution provision was susceptible to three interpretations, including one that would require arbitration (SA-137). Given this ambiguity, comity required that any doubts should have been resolved in favor of arbitration, as they are under the similar presumption of arbitrability in the United States. *See AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 650 (1986).

Moreover, Canadian courts recognize that specialized interpretative principles, rather than common law contract principles of construction, apply to collective bargaining agreements. *See Bartello v. Canada Post Corp.*, [1987] 18 C.C.E.L. 26, 48-50 (H.C.J.). Even if the preference for arbitration in the Canada Labour Code were not alone enough to require that the provision at issue here be interpreted to require that all disputes be arbitrated, at the very least it creates ambiguity as to the provision's meaning. Under the principles applied in Canada to the interpretation of collective bargaining agreements, the past practices of the parties can be used to resolve such ambiguities.[21] Here, the past practice has been, without exception, that the grievances of CSXT's

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have had reference to other administrative remedies, not to any right to go to court.

[21]*See Brown & Beatty, Canadian Labour Arbitration* § 3:4430 (Release No. 4) (3d ed. 1990).

Canadian employees are resolved through the NRAB or another adjustment board, not through the courts (SA-13-17, 19-129).

Canadian law also recognizes the use of equitable estoppel in the interpretation of collective bargaining agreements. Under this doctrine, a longtime practice of one of the parties to a collective agreement, acquiesced in by the other party, may in effect become part of their agreement.[22] As noted above, the longtime practice of CSXT and its unions has been to resolve the grievances of Canadian employees through the NRAB; under the doctrine of equitable estoppel that practice is now part of the parties' agreement.

The court below ignored both of these principles in concluding that the grievance provisions of the contracts at issue unambiguously permitted resort to the courts rather than arbitration, and in so doing violated the requirements of comity. Because this issue can be expected to recur as CSXT's Canadian employees and the foreign employees of other U.S. railroads and airlines attempt to take advantage of the D.C. court's ruling, the ruling raises an important question warranting this Court's review.

IV. The Decision Of The Court Below Will Have Important Consequences For Labor Relations In The Railroad Industry

As noted above, the motivation behind the congressional mandate that minor disputes be subject to the exclusive jurisdiction of the NRAB was an overriding concern, born out of experience, that the resolution of such disputes not be subject to the vagaries and varieties of state court proceedings. *See Lucas Flour*, 369 U.S. at 103-104. There can be no

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[22] *id.* § 2:2200.

dispute that the decision of the court of appeals gives rise to the very impediments to the collective bargaining process described in *Lucas Flour* and contemplated by Congress when it excluded the courts from any role in the resolution of minor disputes in the railroad industry. It requires no stretch of credulity to imagine a situation in which, if the decision of the court below is permitted to stand, a railroad finds itself subject to conflicting obligations toward its foreign and U.S employees as a result of a decision by the NRAB denying the contract claims asserted by the foreign employees' union on behalf of the craft of which they are members, and a contrary decision by some state court to which the individual foreign employees have taken their identical breach of contract claims. Indeed, here, the NRAB has already ruled against Canadian employees in two crafts on the currency issue (SA-167-188). Under the RLA, their exclusive remedy is provided in 45 U.S.C. § 153, First(q), which allows limited review of NRAB awards. However, "[a] party who has litigated an issue before the Adjustment Board on the merits may not relitigate that issue in an independent judicial proceeding." *Andrews v. Louisville & Nashville R.R.*, 406 U.S. at 325. Yet, that is exactly what the Respondents are trying to do by maintaining the same issue in Superior Court.

Moreover, railroads will no longer be able to look to their employees' unions as the sole representative with which it must deal in resolving grievances, since until the applicable state statute of limitations has run on potential breach of contract claims an employer can never be sure that any agreement with the union will be binding on all employees.[23] Furthermore, this court action is not an isolated incident involving these

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[23]*Cf. Humphrey v. Moore*, 375 U.S. 335, 358-59 (1964)(Goldberg, J., concurring)(recognizing that employers and unions have legitimate interest in ensuring that "conceptions of vested contractual rights" not be applied "so as to hinder the employer and the union in their joint endeavor to adapt the collective bargaining relationship to the exigencies of economic life").

Canadian employees. These same employees, represented by the same U.S. counsel, also tried to maintain a breach of contract action against CSXT, based on a dispute over railroad retirement, in *Vollmar v. CSX Transportation, Inc.*, 705 F. Supp. 1154 (E.D. Va. 1989), *aff'd on other grounds*, 898 F.2d 413 (4th Cir. 1990). Although frustrated there, if the court of appeals decision is allowed to stand, state or federal (on a diversity basis) courts may be flooded with grievances by Canadian employees which otherwise would have been arbitrated.

The significant interference that will result from the court of appeals' decision is not limited to CSXT. Every railroad and airline that has any international operations and employs foreign nationals in foreign countries faces this same risk. The issues raised by the decision are thus of substantial importance and application, and therefore warrant this Court's review.

CONCLUSION

For the foregoing reasons, CSXT respectfully requests that a writ of certiorari be issued to the District of Columbia Court of Appeals.

Respectfully submitted,

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December 20, 1990

STEPHEN RASTALL, et al.,
Appellants,
v.

CSX TRANSPORTATION, INC.,
Appellee.

No. 89-261

District of Columbia Court of Appeals.

Argued Feb. 14, 1990.
Decided May 8, 1990.

Before ROGERS, Chief Judge, and FERREN and FARRELL, Associate Judges.

FARRELL, Associate Judge:

This is an appeal from an order of the Superior Court granting summary judgment in favor of appellee, defendant below, CSX Transportation, Inc. (CSXT).[1] The action was brought by appellants Stephen Rastall and Timothy Gowdey, Canadian employees of CSXT, on behalf of themselves and all past, present and future Canadian employees,[2] and alleged

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[1]CSXT is a railroad company incorporated in Virginia. It operates 20,000 miles of track in the United States and 200 in the Canadian province of Ontario. CSXT employs approximately 34,000 people, 200 of whom are Canadian citizens who work entirely in Canada.

[2]For simplicity, appellants will be referred to collectively as "the employees."

a breach of provisions of a collective bargaining agreement between the company and its Canadian employees whereby CSXT purportedly had agreed to pay the wages, pensions and other benefits of the employees in United States dollars.[3]

Shortly after the complaint was filed, CSXT removed the case to the United States District Court for the District of Columbia asserting federal question jurisdiction, 28 U.S.C. § 1331 (1982),[4] on the grounds that either the Railway Labor Act (RLA), 45 U.S.C. §§ 151-88 (1982), or the Labor Management Relations Act (LMRA), 29 U.S.C. §§ 185 *et seq.*, applied to the dispute and required the parties to submit disputes such as this one to arbitration.[5] The district court, however, remanded the case to the Superior Court after concluding that neither the RLA nor the LMRA has extraterritorial effect so as to apply to CSXT's Canadian employees. *Rastall v. CSX Corp., supra* note 4, 696 F. Supp. at 684-85.

CSXT renewed its motion to dismiss in the Superior Court, again asserting that arbitration of this dispute is mandated by either the RLA or the LMRA, thus depriving the courts of jurisdiction to rule on the breach of contract

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[3]Jurisdiction was founded upon the fact that CSXT owns tracks and operates trains in the District of Columbia.

[4]CSXT also sought to invoke the district court's diversity jurisdiction under 28 U.S.C. § 1332 (1982). Since many of the class members' claims were for less than $10,000, however, and since such claims cannot be aggregated for diversity purposes, diversity jurisdiction was lacking. *See Rastall v. CSX Corp.*, 696 F.Supp. 683, 684 (D.D.C. 1988).

[5]At the same time, CSXT filed a motion to dismiss with the district court arguing that the RLA, the LMRA, and the collective bargaining agreement itself mandated arbitration as the exclusive remedy in this type of dispute.

claim.[6] CSXT also contended that if United States labor law did not apply to Canadian employees, then the Canadian Labour Code applied and similarly required arbitration. The trial court declined to rule on the application of federal or Canadian law to the dispute, but instead concluded that the dispute resolution provisions of the labor contracts themselves required the parties to submit to binding arbitration. He therefore granted CSXT's motion for summary judgment.[7]

On appeal, the employees contend that the trial court erred in failing to heed the plain language of the collective bargaining agreements which, they assert, expressly gives Canadian employees the choice of submitting their grievances to arbitration or bringing an action in court. CSXT, on the other hand, while defending the trial court's contract interpretation, urges that the court lacked jurisdiction to rule on the matter to begin with because the RLA deprives the courts of jurisdiction over "minor disputes" such as this one in favor of mandatory arbitration. In the alternative, CSXT contends that either the LMRA, federal common labor law, or the Canadian Labour Code applies to the present dispute and equally compels arbitration.

For the reasons set forth below, we reverse the grant of summary judgment in CSXT's favor and remand the case for further proceedings.

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[6]The employees do not contend that the district court's ruling on the application of the RLA and LMRA became law of the case or otherwise barred CSXT from relitigating the issue in Superior Court. *See* 28 U.S.C. § 1447(d)(order remanding case to state court from which it was removed not appealable).

[7]CSXT had filed a motion to dismiss the complaint which the trial court treated as a motion for summary judgment pursuant to Super.Ct.Civ.R. 12(b)(6)(1989).

I.

Before dealing with the interpretation of the dispute resolution provisions, we must address CSXT's argument that the Superior Court lacked jurisdiction to reach the contractual issues. Any such action, it contends, is preempted by the requirement of arbitration imposed by the RLA, the LMRA, or Canadian labor law. We are unpersuaded.

With regard to the RLA, we agree with United States District Judge Gesell that it does not apply to foreign employees performing services entirely outside the United States. 696 F. Supp. at 684. Indeed, the United States Court of Appeals for the District of Columbia Circuit expressly so held in *Air Line Dispatchers Ass'n v. National Mediation Bd.*, 89 U.S. App.D.C. 24, 29, 189 F.2d 685, 690 (1951), a holding that would appear to bind us. *See M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1979). Even if we were not bound by *Air Line Dispatchers*, our own reading of the statute is in accord with its holding.[8] We are confirmed in that reading by the

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[8]The court in *Air Line Dispatchers* reasoned that the RLA defines "employee" as "every person in the service of a carrier . . . who performs any work defined as that of an employee . . . in the orders of the Interstate Commerce Commission. . . ." 45 U.S.C. § 151, Fifth (1982). Since the jurisdiction of the Interstate Commerce Commission (ICC) is limited to transportation that is "in the United States," 49 U.S.C. § 10501(a)(2)(1982), the RLA has no extraterritorial effect. 89 U.S.App.D.C. at 29, 189 F.2d at 690.

We reject CSXT's argument that this interpretation of the "in the United States" language in defining the ICC's jurisdiction has been undermined by a footnote in *Trailer Marine Transp. Corp. v. Federal Maritime Comm'n.*, 195 U.S.App.D.C. 201, 211 n. 46, 602 F.2d 379, 389 n. 46 (1979). That case (which was decided post-*M.A.P. v. Ryan*) involved an interagency dispute between the ICC and the Federal Maritime Commission over jurisdiction to regulate rates on "joint through" routes between ports in the United

consistent body of federal law elsewhere holding that the RLA has no extraterritorial effect. *See Air Line Stewards & Stewardesses Ass'n v. Northwest Airlines*, 267 F.2d 170, 175 (8th Cir.), *cert. denied*, 361 U.S. 901, 80 S.Ct. 208, 4 L.Ed.2d 156 (1959); *Vollmar v. CSX Transp., Inc., supra* note 8, 705 F. Supp. at 1164-65; *General Comm. on Adjustment v. United States*, 102 L.R.R.M. 2869, 2871, 1979 WL 1862 (D. Minn. 1979), *aff'd*, 620 F.2d 161 (8th Cir.), *cert. denied*, 449 U.S. 826, 101 S.Ct. 88, 66 L.Ed.2d 29 (1980); *Air Line Stewards & Stewardesses Ass'n v. Transworld Airlines*, 173 F. Supp. 369, 374-78 (S.D.N.Y.), *aff'd*, 273 F.2d 69 (2d Cir. 1959), *cert. denied*, 362 U.S. 988, 80 S.Ct. 1075, 4 L.Ed.2d 1021 (1960).

With regard to the LMRA, its application to foreign employees is doubtful, *Windward Shipping Ltd. v. American Radio Ass'n*, 415 U.S. 104, 110, 94 S.Ct. 959, 963, 39 L.Ed.2d 195 (1974); *Benz v. Campania Naviera Hidalgo*, 353 U.S. 138, 144, 77 S.Ct. 699, 702, 1 L.Ed.2d 709 (1957). We need not stop to consider that issue, however, because even if applicable in the present context, the LMRA contains no language requiring arbitration in the face of an agreement providing

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States and Puerto Rico. Such routes are defined as "through movement of cargo from a point of origin on the line of one carrier to a point of destination on the line of the other." *Id.* at 203 n. 1, 602 F.2d at 381 n. 1 (citation omitted). The court construed the Interstate Commerce Act as "conferring plenary jurisdiction on the ICC over both the rail and water segments of Puerto Rico-to-inland United States joint through trade." *Id.* at 208, 602 F.2d at 386. The footnote relied on by CSXT (note 46) merely pointed out that the ICC has been held to have jurisdiction over domestic carriers participating in joint through trade passing overland between the United States and adjacent countries. Recognition of that jurisdiction does not conflict with the basic territorial limitation on the ICC's jurisdiction over transportation solely in another country, or with the *Air Line Dispatchers* decision construing the RLA. *See Vollmar v. CSX Transp. Inc.*, 705 F.Supp. 1154, 1164-65 n. 31 (E.D.Va.1989).

otherwise, nor does CSXT so contend. It merely asserts that, "[u]nder the LMRA, the Appellants would certainly be required to arbitrate *under any agreement which called for arbitration* . . . ." Since, as we demonstrate later, the present agreement does not require Canadian employees to submit their disputes to arbitration, the argument that arbitration is mandated by the LMRA is without merit.[9]

Lastly, we reject CSXT's argument that the Canadian Labour Code, R.S.C. 1970, c. L-1, requires the parties to submit to binding arbitration. It is unnecessary to consider the employees' contention that, under choice of law principles, it is not Canadian law but the law of Maryland, Michigan, and the District of Columbia that governs whether this dispute was required to be arbitrated. Assuming *arguendo* that Canadian law applies, it too does not require arbitration in the face of an agreement providing otherwise.

Section 155(l) of the Canadian Labour Code provides:

> Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration *or otherwise*, of all differences between the parties to or employees

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[9]We also reject the argument that federal common labor law would require arbitration of the present dispute. To the extent Congress has seen fit to exclude foreign workers from the reach of federal labor laws, courts may not properly alter that policy through application of federal common law. *See Textile Workers of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456, 77 S.Ct. 912, 917, 1 L.Ed.2d 972 (1956)(federal common labor law "is fashioned from the policy of our national labor laws"). In any event, CSXT cites nothing in the "policies of federal law" requiring arbitration of a contract dispute where, as we conclude here, the pertinent agreements specifically permit the employees to bypass arbitration.

> bound by the collective agreement, concerning its interpretation, application, administration or alleged violation. [Emphasis added.]

In *St. Anne Nackawic Pulp & Paper Co. Ltd. v. Canadian Paper Workers Union Local 219*, [1986] S.C.R. 704, 723, the Canadian Supreme Court, interpreting the identical phrase in section 55(1) of the New Brunswick Labour Relations Act, N.B. REV.STAT.1973, c. 1-4, stated:

> What the statute does is to establish a preference for arbitration of a particular sort over other means of dispute settlement, by establishing a procedure to be followed where the parties do not expressly provide for any other method of resolving their differences. Where the parties [have chosen otherwise], however, the New Brunswick Act, in common with most of the other Canadian labour relations statutes, does not actually require the parties to resort to arbitration. It requires a provision in the collective bargaining agreement for "final and binding settlement by arbitration *or otherwise*, without stoppage of work". The emphasized words indicate that, if they so choose, the parties may validly provide for a variety of other sorts of settlement mechanisms, including recourse to the courts. [Emphasis in original.]

As this language makes clear, Canadian labor law expresses a preference for arbitration but does not mandate it where the collective bargaining agreement negotiated by the parties specifically permits an alternative form of dispute resolution, including recourse to the courts.[10]

II.

A.

We thus turn to the question of whether appellants are contractually bound to arbitrate the present dispute. At issue are twelve collective bargaining agreements governing relations between the Canadian employees and CSXT, which became effective around 1955. The crafts represented in the dispute include the Carmen, Clerks, Dispatchers, Locomotive Engineers, Locomotive Firemen, Oilers, Mechanical Employees, Maintenance of Way Employees, Signalmen, Supervisors, Trainmen and Yardmen. The bargaining agreements contain two types of dispute resolution provisions. The most common, found in seven of the agreements, is exemplified by Rule 32 of the agreement with the

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[10]Although CSXT cites to Canadian decisions that required arbitration of particular labor disputes, such as *Brunet v. General Motors of Canada*, [1977] 2 S.C.R. 537, *Bartello v. Canada Post Corp.*, [1987] C.C.E.L. 26 (Ont.H.C.), *Bourne v. Otis Elevator Co.*, [1984] 45 O.R.(2d) 321 (Ont.H.C.), and *Close v. Globe & Mail Ltd.*, [1966] 60 D.L.R.(2d) 105, 1 O.R. 235 (Ct.App.), many of the cases involve interpretations of provincial labor codes with language different from the applicable provision in the Canadian Labour Code. In Ontario, for example, where many of these cases were decided, the Labour Relations Act, ONT.REV.STAT.1980, c. 228, does not contain the "or otherwise" language of the national code. The cases cited are also distinguishable in that the collective bargaining agreements at issue there either required arbitration of disputes or were silent on the question of how a particular dispute should be resolved.

Brotherhood of Railway Carmen. Rule 32(1)(c) provides, in relevant part:

> All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto provided in Section 3 Second of the Railway Labor Act.

Rule 32(4), however, provides:

> This Rule is not intended to deny the right of the employees to use *any other lawful action* for the settlement of claims or grievances provided such action is *instituted* within 9 months of the date of the decision of the highest designated officer of the Carrier. [Emphasis added.]

The other five agreements contain language exemplified by Rule 98(c) of the agreement with Brotherhood of Locomotive Engineers, which provides in part:

> Decisions by the highest officer designated to handle claims and grievances shall be final and binding

> unless within sixty days after written notice of the decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative *before a tribunal having jurisdiction pursuant to law* or agreement of the claim or grievance involved. [Emphasis added.]

In his order granting summary judgment,[11] Judge Weisberg concluded that "[t]hese contracts are not ambiguous. Plaintiffs are required to arbitrate this minor dispute . . . because the collective bargaining agreements between their unions and the company require arbitration." In reaching this conclusion, the judge was unpersuaded by the agreements' reservation to the employees of the right to institute "any other lawful action . . . within 9 months" (Carmen's agreement) or "proceedings . . . before a tribunal having jurisdiction pursuant to law" (Engineers' agreement). He reasoned:

> To accept plaintiffs' position, the court would have to find that these parties bargained for a dispute resolution

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[11]Judge Weisberg actually issued two orders. In the first, filed on January 11, 1989, he expressed his inclination to grant summary judgment in favor of CSXT but allowed the employees an opportunity to present any materials relevant to the question whether the contracts required arbitration. On March 1, 1989, concluding that the employees had not presented any new materials identifying a genuine issue of material fact, the judge entered summary judgment in favor of CSXT.

> process in which the Railroad's 32,000 American employees, who are covered by the Railway Labor Act, are forced to arbitrate contract disputes such as this, but its 200 Canadian employees can either arbitrate or go to court, whichever they prefer. If the parties expressly wrote such an unusual dichotomy into their contract, they would of course be held to the benefits and burdens of their agreement, and the court would be obligated to uphold it; but the language relied on by plaintiffs, which differs from agreement to agreement, certainly does not compel that result.

The court made the same point later:

> [I]t is implausible, to say the least, that these unions could have bargained with the Railroad for a dispute resolution provision that would require the Railroad's 32,000 American employees to submit minor disputes such as this one to final and binding arbitration, but would permit the 200 Canadian employees to bypass arbitration and opt for court litigation. Moreover, even if the unions would have had some unknown reason for favoring a tiny minority of their members over the majority, it is hard to imagine why the Railroad would have agreed to such a system. Where,

> as here, plaintiffs' interpretation of those contracts ignores the realities of the marketplace of collective bargaining and goes against the Railway Labor Act and the strong policy favoring arbitration embedded in both American and Canadian labor law, it is not unreasonable for the court to demand some evidence in the contract itself or in the circumstances surrounding the making of the contract that this interpretation was intended by the contracting parties. Plaintiffs have offered nothing, except to argue that the right of the Canadian employees to bypass arbitration is hidden in the folds of the contracts in language which, in context, can not mean what they say it means.

The court concluded:

> To create a right to litigate this dispute in court out of the obscure language relied on by plaintiffs would amount to nothing less than rewriting the contracts, when the agreements themselves say, in language that could not be much clearer, that arbitration is the exclusive method for resolving disputes arising under the contracts.

B.

There is no dispute that the RLA applies to American employees of CSXT and to CSXT itself,[12] and requires that "minor disputes,"[13] such as the one involved in this case, be resolved through arbitration. It is also true, as the trial court remarked, that the employees can point to nothing in the negotiations surrounding these agreements confirming an intent to treat the Canadian employees differently from their American counterparts. There is simply no history one way or the other.[14] We can further agree with the trial court and

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[12]*See* 45 U.S.C. § 151, First, Fifth, for the definitions of "carrier" and "employee".

[13]A "minor" dispute under the RLA involves a disagreement over the interpretation of a collective bargaining agreement, as distinct from a dispute "over the formation of collective agreements or efforts to secure them." *See Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 722-24, 65 S.Ct. 1282, 1289-90, 89 L.Ed. 1886 (1945).

[14]As CSXT acknowledges in its brief, the "dispute resolution provisions of each contract are now decades old, and no one now associated with the railroad has personal recollection or knowledge concerning the negotiation of these provisions." Similarly, in a letter responding to discovery inquiries, CSXT's attorney stated:

> there are no known notes or records relating to the negotiation of the provisions in the various collective bargaining agreements as to grievance resolution specifically relating to Canadian employees. Indeed it is my understanding that there are no such documents relating to U.S. employees, either. The truth is that all of these agreements are decades old, and the substantive bargaining over dispute resolution provisions in these agreements took place in eras as to which no records now exist and no one currently

CSXT that the agreements were drafted against the background of a longstanding "congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration," *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582, 80 S.Ct. 1347, 1352, 4 L.Ed.2d 1409 (1960), a policy embodied in the LMRA and -- as to minor disputes -- even more strongly in the RLA. *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320, 323, 92 S.Ct. 1562, 1564, 32 L.Ed.2d 95 (1972). *See 1901 Wyoming Ave. Coop. Ass'n v. Lee*, 345 A.2d 456, 461-62 (D.C. 1975) ("there is a presumption that the reasonable person knows all the circumstances surrounding the making of the contract"). We can also agree with CSXT that "[a] collective bargaining agreement is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate," *United Steelworkers, supra*, 363 U.S. at 578, 80 S.Ct. at 1350, and that one eventuality the parties likely did not anticipate -- to quote CSXT -- "was that Canadian employees might seek to avoid the arbitral mechanisms of the contracts."

Having conceded all of this, however, we cannot agree with the trial judge that these agreements limit the methods of formally resolving minor disputes to arbitration. Notwithstanding federal labor policy generally and "the realities of the marketplace of collective bargaining," we conclude that the agreements are unambiguous in leaving the employees the choice of submitting their grievances to arbitration or resolving them in court.

It is apparent at the outset that it is not the agreements themselves that create the dichotomy between American and

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employed by CSXT was involved in those negotiations.

Canadian employees which the trial court found anomalous; rather it is the RLA, which courts at least since 1951 have interpreted not to apply to non-United States citizens performing work outside the United States. *See* part I, *supra*. Thus the fact that the agreements, if applied to American employees, would contravene the RLA is not grounds on which to disregard the plain meaning of their language. When an agreement is "facially unambiguous, its language should be relied upon as providing the best objective manifestation of the parties' intent." *1010 Potomac Assoc. v. Grocery Mfrs. of Am.*, 485 A.2d 199, 205 (D.C. 1984). Rule 32 of the Carmen's agreement, while requiring resort to arbitration by either the employee or his representative (the union), expressly reserves to the employee the right to pursue *any other lawful action* for the settlement of a claim or grievance. Rule 98(c) of the Engineers' agreement, while not mentioning arbitration at all, similarly allows the employee or his representative to institute proceedings *before a tribunal having jurisdiction pursuant to law* over the claim or grievance. There is nothing arcane or obscure about these phrases,[15] nor are they "hidden in the folds of the contracts" as the trial judge believed. They are an express reservation of non-arbitration remedies to the employees, and as such they qualify the earlier, seemingly mandatory provision of the Carmen's agreement for arbitration.

A similar issue was presented in *Independent Oil Workers v. Mobil Oil Corp.*, 441 F.2d 651 (3d Cir.1971), in which the court interpreted a dispute resolution provision containing both a mandatory arbitration clause and a clause stating that "[n]othing in this agreement shall prevent either Company or

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[15]CSXT asserts that the phrase "claim or grievance" in Rule 98(c) is, "[i]n railroad vocabulary, . . . arbitration terminology," but provides no case or other support for this assertion.

Union . . . from applying . . . to a court of competent jurisdiction for the relief to which such party may be entitled. . . ." *Id.* at 652 n. 3. The court, while acknowledging the preference for arbitration under federal labor law, held that this "qualification . . . takes away the mandatory aspect of the contractual grievance procedures" and creates "an 'escape' clause which nullifies the mandatory terms of the earlier language and makes arbitration optional." *Id.* at 653, 654. We read the pivotal language of the instant agreements in the same way. The federal policy favoring arbitration "would not . . . preclude . . . [an employee's] court suit if the parties to the collective bargaining agreement expressly agreed that arbitration was not the exclusive remedy," *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 657-58, 85 S.Ct. 614, 618-19, 13 L.Ed.2d 580 (1965); *see Vollmar v. CSX Transp., supra* note 8, 705 F. Supp. at 1170, and we conclude that that is what transpired here.

The alternative readings of the relevant language offered by the trial court and CSXT are not persuasive. The trial court found it "much more reasonable . . . to interpret Rule 32(4) simply as a contractual recognition of the employee's right under the [RLA] to pursue a grievance *even* in cases where his union declines to pursue it" (emphasis added). But as the district court recognized in *Vollmar v. CSX Transp., supra* note 8, this reading makes Rule 32(4) of the principal agreement superfluous because Rule 32(1)(c) already allows an "employee *or* his duly authorized representative" (emphasis added) to file a claim or grievance. 705 F. Supp. at 1170 n. 54; *see* RESTATEMENT (SECOND) OF CONTRACTS § 203(a)(1981)(interpretation giving effect to all terms is preferred over one leaving one part of no effect). Nor can we give proper effect to the language by reading it -- as CSXT urged below -- as preserving the employee's right to go to court in the rare situations where courts have recognized

exceptions to mandatory arbitration provisions. That too would make the language essentially redundant. Finally, CSXT argues that Rule 32(4) is only "intended to enable an individual employee to *settle* grievances" (emphasis by CSXT), *i.e.*, with the employer, "even if the union would prefer to pursue them," and that the term "lawful action" does not mean "lawsuit" but rather "some deed which accords with the law" in the sense that it is not an unfair labor practice. The provision, however, refers to the "settlement of claims" by means of "institut[ing]" an "action", which cannot plausibly mean simply reaching an agreement with the employer.

The fact that "in retrospect [the] agreement[s do] not seem favorable [to CSXT] does not give . . . this court the right to reinterpret clear and unambiguous contractual language." *E.P. Hinkel & Co. v. The Manhattan Co.*, 165 U.S. App.D.C. 140, 144, 506 F.2d 201, 205 (1974). We hold that the agreements reserve to the employees the right to bypass arbitration in favor of resolving disputes in court. Accordingly, we reverse the order of the Superior Court and remand the case for further proceedings.

So ordered.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

STEPHEN RASTALL, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 1414-88
	:	Civil I - Judge Weisberg
CSX TRANSPORTATION, INC.,	:	
	:	
Defendant.	:	
	:	
	:	

ORDER

On January 11, 1989, this court entered an order treating defendant's motion to dismiss as a motion for summary judgment and stating that summary judgment of dismissal in favor of defendant would be granted unless plaintiffs, by February 15, 1989, submitted materials pertinent to a Rule 56 motion, which identified a genuine issue of material fact on the question of whether plaintiffs are required to arbitrate this dispute under the various collective bargaining agreements between their unions and the defendant Railroad. Nothing in plaintiffs' February 15 submission raises a genuine issue of material fact on this question. Instead, plaintiffs have used the occasion to reargue their contention that they are permitted by their collective bargaining agreements to litigate this dispute in court. Plaintiffs' only new authority in support

of their contention is the opinion of Judge Ellis in *Vollmar, et al. v. CSX Transportation, Inc.*, C.A. No. 88-938-A, a case brought in the Eastern District of Virginia by these same plaintiffs, in which Judge Ellis considered this court's January 11 Order and came out the other way on the issue of arbitrability.[16] In effect, plaintiffs have argued that this court is wrong because Judge Ellis is right.

The thoughtful opinion of Judge Ellis does not persuade the court to change the views expressed in its Order of January 11. The court continues to believe that it is implausible, to say the least, that these unions could have bargained with the Railroad for a dispute resolution provision that would require the Railroad's 32,000 American employees to submit minor disputes such as this one to final and binding arbitration, but would permit the 200 Canadian employees to bypass arbitration and opt for court litigation. Moreover, even if the unions would have had some unknown reason for favoring a tiny minority of their members over the majority, it is hard to imagine why the Railroad would have agreed to such a system. Where, as here, plaintiffs' interpretation of these contracts ignores the realities of the marketplace of collective bargaining and goes against the Railway Labor Act and the strong policy favoring arbitration embedded in both

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[16]In addition to Judge Ellis' decision in *Vollmar*, plaintiffs also purport to rely on a 1964 arbitration before the National Railroad Adjustment Board in which, according to plaintiffs, defendant's predecessor took a position inconsistent with the position defendant takes here on the issue of arbitrability. Plaintiffs' reliance on those 1964 proceedings is misplaced for two reasons. First, the Railroad did not concede in the 1964 arbitration that its Canadian employees could litigate that dispute, but argued simply that the dispute should be adjudicated, presumably by arbitration, in Canada. Second, the National Railroad Adjustment Board rejected the Railroad's position as to venue, but held that it had jurisdiction to arbitrate the dispute even though it involved Canadian employees who were otherwise exempt from the coverage of the Railway Labor Act.

American and Canadian labor law, it is not unreasonable for the court to demand some evidence in the contract itself or in the circumstances surrounding the making of the contract that this interpretation was intended by the contracting parties. Plaintiffs have offered nothing, except to argue that the right of the Canadian employees to bypass arbitration is hidden in the folds of the contracts in language which, in context, can not mean what they say it means.

"The meaning of an integrated contract is an issue for the finder of fact only if the contractual language is ambiguous -- i.e., where its interpretation depends on the credibility of extrinsic evidence or on a choice of reasonable inferences from such evidence." *Dodek v. CF 16 Corp.*, 537 A.2d 1086, 1092 (D.C. 1988) (citations omitted). Where a contract is unambiguous, summary judgment is appropriate. *Id.* Moreover, whether a contract is ambiguous is a question of law for the court, and "[c]ontracts are not rendered ambiguous by the mere fact that the parties do not agree upon their proper construction." *Id.* (quoting *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983)).

These contracts are not ambiguous. Plaintiffs are required to arbitrate this minor dispute, not just because the Railway Labor Act requires arbitration (from which plaintiffs, as Canadian workers, are arguably exempt), but because the collective bargaining agreements between their unions and the company require arbitration. No other reading of these contracts makes sense. To create a right to litigate this dispute in court out of the obscure language relied on by plaintiffs would amount to nothing less than rewriting the contracts, when the agreements themselves say, in language

that could not be much clearer, that arbitration is the exclusive method for resolving disputes arising under the contracts.

For the foregoing reasons, and for the reasons stated in this court's Order of January 11, 1989, it is this 1st day of March, 1989

ORDERED that defendant's motion to dismiss, treated as a motion for summary judgment pursuant to Sup. Ct. Civ. R. 12(b), be, and it hereby is, granted.

_____ _____

Date JUDGE FREDERICK H. WEISBERG

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 89-261

STEPHEN RASTALL, ET AL.,

Appellants, CA1414-88

v.

CSX TRANSPORTATION, INC.,

Appellee,

BEFORE: Rogers, Chief Judge; Newman, Ferren, Belson, Terry, Steadman, Schwelb, Farrell, and Wagner, Associate Judges.

O R D E R

On consideration of appellee's petition for rehearing en banc, the opposition thereto, appellee's motion for leave to file supplemental petition for rehearing en banc, and the lodged supplemental petition, it is

ORDERED that the motion for leave is granted and the Clerk is directed to file the lodged supplemental petition for rehearing en banc; and it appearing that no judge of this court has called for a vote on the supplemental petition for rehearing en banc, it is

FURTHER ORDERED that the supplemental petition for rehearing en banc is denied.

PER CURIAM

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 89-261

STEPHEN RASTALL, ET AL.,
Appellants,

v. CA1414-88

CSX TRANSPORTATION, INC.,
Appellee,

BEFORE: Rogers, Chief Judge, and Ferren and Farrell, Associate Judges.

O R D E R

On consideration of the motion of appellee to recall and stay mandate, it is

ORDERED that the motion is granted and the mandate of this court issued on October 18, 1990, is deemed recalled solely for the purpose of permitting the redating of this court's judgment to permit the filing of a petition for writ of certiorari in the Supreme Court of the United States. *See Corley v. United States*, 416 A.2d 713 (D.C. 1980). It is

FURTHER ORDERED that issuance of the mandate is hereby stayed for thirty days.

PER CURIAM

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 89-261

STEPHEN RASTALL, ET AL.,
Appellants,

v. CA1414-88

CSX TRANSPORTATION, INC.,
Appellee,

BEFORE: Rogers, Chief Judge, and Ferren and Farrell, Associate Judges.

J U D G M E N T

On November 20, 1990, this court entered an order recalling the mandate in this appeal for the purpose of redating the judgment to permit the filing of a petition for writ of certiorari in the Supreme Court of the United States. In light of that order, it is

ORDERED and ADJUDGED that the judgment on appeal here be, and it is hereby reversed and this cause is remanded for further proceedings.

FOR THE COURT:

RICHARD B. HOFFMAN
Clerk of the Court

STATUTES

The Railway Labor Act, 45 U.S.C. § 151 *et seq.* provides, in pertinent part:

Section 1:

> Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Section 1a:

> The purposes of this chapter are: * * *
> (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Section 2:

> Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name

or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter.*

* *

Section 3:

First. There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided--

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

* * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934 shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to

reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.* * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.* * *

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating officer of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties. . . . *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or

for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of Title 28. * * *

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it.* * *

Such awards shall be final and binding upon both parties to the dispute and if in favor of the

> petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

The *Canada Labour Code* provides, in pertinent part:

> 155(1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or employees bound by the collective agreement, concerning its interpretation, application, administration or alleged violation.